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In re Application of
Justin M. Smyers *et al*
Application No. 09/921,762
Filed: August 3, 2001
Attorney Docket No. RPC 0575 PUS

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: DECISION ON PETITION
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This is a decision on the petition filed by facsimile transmission on July 9, 2004 by which petitioner requests withdrawal of the examiner's holding that the appeal brief filed on April 5, 2004 does not comply with 37 CFR 1.192(c)(6) for failing to contain a concise statement of the issues on appeal and for referring to the use of the color red for drawings that appear in the appeal brief. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

A review of the record shows that the examiner's holding is arbitrary, capricious, and an abuse of discretion for the reasons set forth in the section of the petition entitled "Argument and Request for Relief." Nothing in the appeal brief appears to violate 37 CFR 1.192(c).

The application is being returned to the Supervisory Patent Examiner for Art Unit 3727 who will forward the application to the examiner for immediate action on the appeal brief. Such action shall not be inconsistent with this Decision.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Konstantine J. Diamond
4010 E. 26th Street
Los Angeles, CA 90023